MUNICIPAL CORPORATIONS—CONDITION OF HIGHWAY—NEGLIGENCE. — The plaintiff who was traveling at night in a buggy along a straight but narrow highway, walled in on each side by abrupt natural banks, was backed through a nine-foot opening in one side and down a precipitous descent. Plaintiff was using due care. The road was in the condition in which it had been traveled without accident for years, and was so narrow that it was impossible for a buggy to go through the opening unless backed directly across the road. *Held,* that the occurrence was so improbable and unnatural that it would not ordinarily be anticipated and the town was not negligent. *Wade* v. *Town of Worcester* (1909), 118 N. Y. Supp. 657.

This case is of interest because of the very unusual facts and the nice question presented for the court to determine whether or not the town was negligent in failing to maintain a barrier at the place where the accident occurred. The established rule is that it is the duty of the municipality to exercise ordinary care in keeping its streets in a reasonably safe condition for public use in the ordinary way. *Clifton* v. *Philadelphia,* 217 Pa. St. 102; *Teager* v. *City of Flemingsburg,* 109 Ky. 746; DILLON, MUN. CORP., Ed. 3, § 1019. It is not required to make them absolutely safe nor to do everything that it is possible to do to prevent injury. *Landolt* v. *City of Norwich,* 37 Conn. 615. However it is liable for negligence. DILLON, MUN. CORP., Ed. 3, § 1020; *Twist* v. *City of Rochester,* 37 App. Div. 307, affirmed, 165 N. Y. 619. The determination of whether or not the municipality is exercising reasonable care depends in each case upon surrounding circumstances. *Bender* v. *Minden,* 124 Iowa 685. The care must always be reasonable and proportionate to the danger. *City of Spring Valley* v. *Thomas Gavin,* 182 Ill. 232. In such cases the number and extent of the streets are immaterial. *Moore* v. *City of Kalamazoo,* 109 Mich. 176. While it is true that the size of the place makes no difference in the amount of care and diligence required of the municipality, "yet what may be such care in one place may not be in another, and so the size of the place, the amount of travel, and all the surrounding facts and circumstances are considered in determining defendant's negligence, or whether it has exercised the reasonable care which is imposed upon it in respect of this particular duty." *Forker* v. *Borough of Sandy Lake,* 130 Pa. St. 123. In the principal case the surrounding facts and circumstances were of such a nature that it could not be expected that all the judges would concur.

MUNICIPAL CORPORATIONS—DEFECTIVE SIDEWALKS—NOTICE OF INJURY.— The charter of a city provided that the city shall not be liable for damages arising from defective sidewalks unless a notice in writing of the accident and injury complained of is filed with the city clerk within twenty days after date of injury. Plaintiff slipped and fell on the sidewalk and sued to recover damages for personal injuries. Rendered unconscious instantly by the fall and remaining in that condition for more than twenty days it was impossible for him to give the city notice within the statutory period. *Held,* the disability did not create an exception to the statutory provision which required notice to the city of the claim for personal injuries. *McCollum* v. *City of South Omaha* (1909), — Neb. —, 121 N. W. 438.

The cases that are cited support the decision. *Davidson* v. *City of Muskegon,* 111 Mich. 454; *Morgan* v. *City of Des Moines,* 60 Fed. 208; *Donovan* v. *City of Oswego,* 42 App. Div. 539. Other cases in support of the rule are *Goddard* v. *City of Lincoln,* 69 Neb. 594; and *Schmidt* v. *City of Fremont,* 70 Neb. 577. However, FAWCETT, J., in his dissenting opinion declared in forceful and severe terms the flagrant injustice of such a rule. His position is supported not only by "every instinct of humanity," but also by the following cases. *Green* v. *Village of Port Jervis,* 55 App. Div. 58; *Walden* v. *City of Jamestown,* 178 N. Y. 213; *Barry* v. *Village of Port Jervis,* 64 App. Div. 268; Affirmed 180 N. Y. 521; *Winter* v. *City of Niagara Falls,* 190 N. Y. 198; and *Forsyth* v. *City of Oswego,* 191 N. Y. 441. In *Walden* v. *City of Jamestown,* 178 N. Y. 213, the court accepting the maxim, "the law does not seek to compel a man to do that which he cannot possibly perform," BROOM'S LEGAL MAXIMS, Ed. 4, p. 178, based its construction of a similar statute on the fundamental canon of construction "that a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers," and after declaring that "it would shock the sense of justice if this charter provision were construed so as to hold such service insufficient, held that service of notice by the plaintiff as soon as she was able to attend to business was a substantial compliance. In *Forsyth* v. *City of Oswego,* 191 N. Y. 441, it is held that if the plaintiff is physically and mentally unable to prepare and present his claim, or give directions for its preparation and presentation during the whole of the statutory period, then he is entitled to a reasonable additional time in which to comply with the charter in that regard. A similar rule was announced in *Green* v. *Village of Port Jervis,* 55 App. Div. 58; and in *Winter* v. *City of Niagara Falls,* 190 N. Y. 198. In *Barry* v. *Village of Port Jervis,* 64 App. Div. 268, affirmed in 180 N. Y. 521, it is held that the provision in defendant's charter requiring notice within forty-eight hours "is obnoxious to the constitution of this state; that it is hostile to the broad jurisprudence of the state, which undertakes to provide an adequate remedy for every legal wrong. It is unfair in spirit; it makes the rights of individuals depend upon chance rather than upon the uniform administration of the law, and is intended to defeat rather than conserve the legitimate ends of government. It is intended to work wrong instead of right; it is arbitrary and without justification in public policy; and it should be denied the force of law."

NEGLIGENCE—LIABILITY OF MANUFACTURER TO CONSUMER—PRIVITY.—The defendant corporation engaged in the manufacture and sale of toilet soap, sold to H. & Co., co-defendants in this action, certain soap as a harmless article for toilet purposes, free and clear of all harmful substances. Defendant by its servants permitted a cake of soap made by them to contain a needle deeply imbedded in it. This cake was bought by H. & Co., who in turn sold it to the plaintiff implying that it was safe. In using this soap the needle became imbedded in the plaintiff's hand, producing paralysis and disability. *Held,* on separate demurrers to the complaint, that as to H. & Co., there was no negligence as the needle was invisible to the naked eye; as to